The 3E Company, Inc. and International Brother-hood of Electrical Workers, Local Union #567, AFL-CIO. Case 1-CA-28534

November 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On July 12, 1993, Administrative Law Judge William A. Pope III issued the attached decision. The Respondent filed exceptions, a supporting brief, and a reply brief, and the General Counsel filed exceptions and a supporting brief, and a brief in support of the judge's decision.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt the recommended Order as modified and set forth in full below.²

ORDER

The Respondent, the 3E Company, Inc., Old Town, Maine, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Coercively interrogating its employees about their union activities or the union activities of other employees, and/or from threatening its employees with layoff, discharge, or termination of their employment, or with any other form of reprisal, for engaging in union activities.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

Member Raudabaugh finds it unnecessary to decide whether Supervisor Werner unlawfully interrogated employee Tonken, as this finding would be cumulative and would not affect the remedy.

²The General Counsel has excepted to the judge's failure to additionally order the Respondent to mail copies of the notice to employees who worked for the Respondent at the time of the unfair labor practices. In this regard the General Counsel contends that it is likely that the work at the jobsite involved has been completed and that many of those employees no longer work for the Respondent. In these circumstances, we find that requiring the mailing of the notice to the above employees is appropriate to ensure that all the Respondent's employees are informed of our decision.

- 2. Take the following affirmative action necessary to effecutate the policies of the Act.
- (a) Post at its facilities in Old Town and Elizabeth, Maine, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (b) Mail a copy of the attached notice to all employees employed by the Respondent at the Scarborough, Maine jobsite at the time of its unfair labor practices. Such notice shall be mailed to the last known address of each employee. Copies of the notice, on forms provided the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt by the Respondent, as directed above.
- (c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees about their own union activities or the union activities of other employees

WE WILL NOT threaten employees with layoff, discharge, or loss of employment, or with any other form of reprisal because they join, support, or assist a union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

THE 3E COMPANY, INC.

Cheryl Anne Watson, Esq., for the General Counsel.
Malcolm E. Morrell, Jr., Esq., of Bangor, Maine, for the Respondent.

¹We adopt the judge's conclusions that the Respondent, through its supervisor, Werner, violated Sec. 8(a)(1) by coercively interrogating employees about their union activities, making disparaging statements about employees who engaged in union activities, and threatening retaliation against employees for engaging in union activities. In finding Werner's statements attributable to the Respondent, we note that it is well settled that an employer is bound by the statements of its supervisors. *Ideal Elevator Corp.*, 295 NLRB 347 fn. 2 (1989). Accordingly, we disavow the judge's discussion in sec. III of his decision concerning whether Werner was specifically authorized by the Respondent to make such statements.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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DECISION

WILLIAM A. POPE II, Administrative Law Judge. Respondent 3E Company, Inc. violated Section 8(a)(1) of the National Labor Relations Act, by making disparaging statements about employees who engaged in union activities, interrogating employees about their union activities, and threatening employees with layoffs or unspecified reprisals because they engaged in union activity. The original charge was filed on September 18, 1991. Trial was held before Administrative Law Judge William A. Pope II on November 18, 1992, in Portland, Maine.

Background

The 3E Company is an electrical contractor with its home office located in Old Town, Maine. The Company works principally on commercial and on some industrial projects in the State of Maine. Its Southern Division is now located in Elizabeth, Maine, but in 1991 it operated from a mobile office located on a construction project in Auburn, Maine. At all times relevant to this case, James Lamson was a vice president of the 3E Company and was in charge of the Company's Southern Division. Lamson's responsibilities included bidding jobs, ordering and purchasing materials for jobs, hiring employees for jobs, and acting as project manager for the Southern Division's jobs. During the 1990–1991 period, the 3E Company's Southern Division employed approximately 12 full-time employees and hired additional temporary employees for its jobs, as needed.

In December 1990, the 3E Company's Southern Division began work on a store under construction in Scarborough, Maine, for the Sam's Warehouse Club. Initially the Company needed only one or two part-time employees for the job, but by March 1991, the job had reached a stage where a larger contingent of employees was needed, and the Company called back to work employees who had been laid off at the end of the preceding year and placed a newspaper advertisement for new employees. Lamson picked the crew he wanted from among over 100 applicants. He informed the new employees he hired that the Scarborough job would be short term, lasting from 6 to 10 weeks. The 3E Company foreman on the job until he left the Company's employment in mid-June was Paul Werner.

Issues

The amended complaint alleges that Respondent 3E Company violated Section 8(a)(l) of the Act at its Scarborough, Maine, jobsite (Sam's Warehouse Club), when, on or about April 25, 1991, its foreman, Paul Werner, made disparaging statements about employees engaging in union activities, and interrogated employees about their union activities; then in or about late April 1991, threatened employees with layoff because of their union activities; and, at various times in April 1991, threatened employees with unspecified reprisals because they had engaged in union activities.

General Counsel argues that there is credible testimony from witnesses Charles Campbell and Elliot Tonken establishing the alleged violations of the Act. The case largely turns on credibility, General Counsel asserts, and whereas Campbell and Tonken were credible witnesses, the testimony of Paul Werner, who denied making the statements attributed to him, was vague, evasive, and inconsistent, and is not cred-

ible. Although General Counsel does not contend that Respondent's vice president, James Lamson, made any of the alleged unlawful statements, General Counsel does contend that his testimony was disingenuous, and should not be credited. According to General Counsel, Lamson was at the jobsite 5 or 6 days a week, and it is incredible under the circumstance prevailing at the jobsite that talk about the Union did not come to his attention, or that he had no knowledge of union activity.

Respondent denies that Werner made the statements attributed to him, and asserts that its vice president, James Lamson, knew when he hired them that Tonken and another employee named Hicks were union members. Respondent asserts that the testimony of Werner is more credible than that of Campbell and Tonken. Respondent, citing *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1106 (9th Cir. 1985), further argues that even if the alleged statements were made, they did not violate the Act when viewed in the reality of the workplace.

I.

General Counsel called two witnesses, Charles Campbell and Elliot Tonken, both of whom were employed by Respondent on the Scarborough (Sam's Warehouse Club) job. Campbell, who had worked previously for Respondent in 1990, was hired by Respondent in March 1991 for the Scarborough job, and worked at the site until July 1991, when he was assigned to another jobsite, where he continued working for Respondent until September 1991. Tonken was hired by Respondent to work on the Scarborough job on April 7 or 9, 1991, and worked there until he was laid off in mid-July 1991. He had previously worked for Respondent in 1986 or 1987.

Campbell was not a union member when he was hired by Respondent in March 1991, but he later joined Local 567 in September 1991. He testified that he learned of Local 567 from Elliot Tonken in several conversations that took place on the Scarborough jobsite in April 1991, during lunch or restbreaks. Tonken told him to contact Ben Nest, an organizer for Local 567, if he was interested in joining the Union. Campbell testified that in mid to late April, Paul Werner, Respondent's foreman on the job, asked him what his conversations with Tonken were about. Campbell told him they were about the Union. Werner said that he did not like the idea of Tonken talking about the Union on the jobsite. He testified that Werner said that when there was a layoff coming up, Tonken would be one of the first laid off.

Sometime in April or May 1991, Werner showed Campbell a list of names in a brown notebook that he carried with him on the job, and said they were employees who would be laid off. The employees whose names were on the list were Elliot Tonken, Ed Hevey, Paul Lavelle, and Roger Hicks. Campbell said that Werner referred to the brown notebook for circuit numbers, panel schedules, and other general information that foremen had to know. About a month later, according to Campbell, five or six employees, including those on Werner's list, were laid off from the Scarborough job. Campbell said that the 3E Company had as many as about a dozen 3E Company employees working on the job, but that the job was winding down when the layoff took place. He said there were still a couple of 3E Company em-

ployees working on the job when he was transferred to a 3E Company job in Auburn, Maine, in June 1991.

Elliot Tonken denied that there was a union organizing campaign going on at the Scarborough jobsite, or that he attempted to start a union among 3E Company employees at the jobsite. He said that he made no attempt to hide his union membership, and that he had IBEW stickers on his car, truck, lunch bucket, and toolbox, and that he wore a union pin on his jacket. He said that if he was asked about his union membership, he acknowledged it, but he did not solicit other employees to join the Union. In one of his conversations with Campbell, the latter asked how to join the Union, and Tonken advised him to get in touch with Ben Nest, a Local 567 organizer. In a conversation with Campbell near the end of April, Campbell told him that the Company was "looking to get rid" of him because he belonged to the Union.

Late in April 1991, Werner asked Tonken if he belonged to the Union, and he replied that he did. Werner then asked him if he was there to cause trouble, to which Tonken replied that he was there only to do his job. A week or two later, Tonken said, Werner asked him what the Union was like. He said that others who asked him if he was a union supporter included employees Campbell, Hicks, Hevey, and Lavelle. On one occasion, during a lunchbreak, Campbell asked what the Union was like and, in the presence of four or five other employees, Tonken told Campbell about his benefits.

Tonken testified that he applied by telephone for a job with 3E Company after seeing a newspaper advertisement. He recalled speaking to James Lamson's secretary, and acknowledged that he possibly spoke to Lamson on April 3. When he started working for 3E Company on April 7 or April 9, he was asked if he would like to work in Augusta, Maine, in a few weeks if a job started there, and he replied that he would. Subsequently, when he retured to work after being off because of a work-related injury, he was sent to a job in Augusta, but he worked on that job for only one-half day because there was insufficient work. With Lamson's permission he returned the next day to the Scarborough job.

Tonken testified that two other people told him he was going to be let go, but that when he asked Lamson on several occasions if he was going to be laid off, Lamson said, "no." Tonken said that he heard only that his and Hevey's names were on the list. Hevey and he were working in the same area of the job when Lamson told them that they were being laid off.

II.

Respondent 3E Company also called two witnesses in its case. The first was James Lamson, the Company's vice president in charge of its Southem Division and the Scarborough job. Lamson testified that the job had a tight time schedule, and that he told the employees who were hired for the job that the job would last from 6 to 10 weeks. He said he hired about a dozen people just for that project, including a number of people who had worked for him before. The former employees included Elliot Tonken, Paul Lavelle, Roger Hicks, Charles Campbell, and Ray Goodwin. Among those who showed up at the jobsite to apply for work on April 4, 1991, was Ben Nest, who told Lamson that if he was hired he was going to organize the 3E Company. Lamson said that

he did not hire Nest. Lamson stated that he had heard talk a year before that the Union was interested in the 3E Company, and the Union wanted a job his company was working on at the time to be a union job.

Lamson stated that he knew at the time he hired them for the Scarborough job that three people, Elliot Tonken, Roger Hicks, and Jo Jo Richard, had worked previously on union jobs. Lamson said that it did not matter to him whether an employee was union or nonunion. He said if an employee had worked for him before, he judged the individual on what he had done, not on whether he was union or nonunion.

Lamson said that he did not believe there was a union campaign at the Scarborough job, but he suspected there was union activity because Nest had shown up on the first day and had said he was going to try to organize the 3E Company. Further, in April an unfair labor practice charge was filed against the 3E Company over the Company's failure to hire 20 people for the Scarborough job. He said that when the subject of the Union did come up in conversations, his general response was that it did not matter to him how anyone felt, all he wanted his employees to do was to make a decision based on facts as to whether or not they wanted to belong to a union. He denied suggesting that employees who engaged in union activities would be laid off, or would otherwise be in trouble.

According to Lamson, by mid-May the man-hours expended by the 3E Company on the Scarborough job had declined from a high of 1000 hours per week to 300 hours per week. The job actually lasted for some time after that because deliveries by Walmart of fixtures to be installed slowed down. By the first part of July, the Company had only two men working on the job, one of whom was Charles Campbell. Campbell was sent to Auburn, Maine, to work on a project that lasted for an additional 6 weeks.

Lamson said that he tried to keep to himself information that a job was winding down and layoffs would be required. He said that he would wait until the last minute to personally lay off or terminate unneeded employees. He said that the 3E Company did not have a layoff policy based on seniority. Instead, such decisions were based on an appraisal of employees' work performance on the job. He said that he did discuss work performance of employees on the Scarborough job with the job foreman, Paul Werner. Werner knew that Roger Hicks had asked to be laid off first because he was moving out of State, and that Hicks would be among the first to be laid off. Lamson said that Paul Lavelle had an attendance problem, and he may have told Werner that Lavelle might be going. Otherwise, Lamson testified, he did not tell Werner who was being laid off until the day the layoffs took place.

In May 1991, Lamson laid off four employees on the Scarborough job and one on a job in Augusta, and there were more layoffs in June. He said the decision regarding who to lay off in May was difficult, except for Hicks, who had asked to be laid off first. The others selected for layoff included Lavelle and Hevey, who had attendance problems,

¹The parties stipulated that the Charging Party filed an unfair labor practice charge on April 19, 1991, alleging that the Respondent had violated the Act by refusing to hire certain named applicants for employment because of their union activities. The Regional Director determined that the charge had no merit and dismissed the case. The Regional Director's decision was appealed, and the appeal was denied by the General Counsel.

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and Tonken, whose production was not quite as much as Lamson thought it should be. Also a factor in deciding whom to lay off, according to Lamson, was his desire to cut back on the number of high-paid employees on the job.² Those terminated by Lamson on the same day in May were Ed Hevey, Elliot Tonken, Roger Hicks, Paul Lavelle, and Keith Kendall.

Lamson testified that he never saw Paul Werner with a brown notebook. He said that he observed that Werner carried a small green and white notebook in which employees' daily time was kept, and a three-ring binder in which he kept his daily foreman's reports. Lamson denied ever discussing union activity with Werner, other than organizing activity.

Paul Werner, Respondent's foreman on the Scarborough job and its second witness, denied having any conversations with Charles Campbell or Elliot Tonken about unions. He said that Lamson visited the site regularly, and sometimes stayed the entire day. He said that Lamson never gave him a list of employees who would be laid off. Werner denied that he ever made such a list or showed such a list to Campbell or Tonken. Werner denied that he ever carried a small, brown notebook on the job.

When initially questioned about union activity on the Scarborough job, Werner said that someone, he did not recall whom, mentioned the Union, but he took it rather lightly. According to Werner, "somebody may have come up to me and asked me what I know about the union, which is very little, and what my thoughts are which are none. And that would have been the extent of it." Later in his testimony, however, Werner acknowledged that there was considerable talk about the Union among Respondent's employees on the Scarborough job. He said that everybody on the job was talking about the Union, and he acknowledged that he told Lamson that some employees were asking questions about the Union. According to Werner, Lamson told him "not to get in to it, unless I wanted to," and "don't let my workwhat I have to do at the job be affected." Werner denied that he referred any employees to Lamson to get answers to their questions about the Union. He denied making any general comments to employees about unions. He said that he knew nothing at the time of the unfair labor practice charge filed against the Company, and he was not aware the Union wanted the Company off the jobsite.

Werner stated that employees often asked him if they were going to be laid off, because everyone knew it was a short project and they wanted to know if they would be sent on another project. He said that his response was that he did not make those decisions. Werner said that the first he knew

there was going to be a layoff in May 1991 was on the afternoon Lamson actually laid the employees off.³

Werner acknowledged that he knew Tonken was a union supporter from general talk on the job. He said he did not recall what was said, or who said it. He did not recall hearing it from Tonken, nor did he recall hearing Tonken talking about the Union. He also said he did not recall seeing Tonken's union pin. Werner said he had no knowledge of Campbell's position regarding the Union.

Werner denied any close association with the 3E Company employees, stating "[t]ypically I did not break with the guys nor did I take lunch with them."

III.

Having had the opportunity to observe the demeanor of the witnesses as they testified, as well as the opportunity to weigh the testimony of each in light of the extent to which their testimony is corroborated or not corroborated by the testimony of other witnesses or by other evidence in the case, I find that the testimony of Charles Campbell and Elliot Tonken is more credible than that of Paul Werner. Campbell and Tonken appeared to testify in an open and direct manner, compared to Werner, who appeared to be evasive and intent on avoiding being pinned down to detail.

I credit the testimony of Campbell and Tonken, and I find as fact in this case that Werner questioned Campbell about his conversations with Elliot Tonken, and after learning that the conversations concerned the Union, told Campbell that he did not like the idea of Tonken talking about the Union on the job. I find further that Werner told Campbell that when a layoff came up, Tonken would be one of the first to be laid off. I also find that Werner showed Campbell a list of names, which included Tonken's name, in a brown notebook, and said they were the employees who would be laid off. I further credit the testimony of Elliot Tonken that in late April 1991 Werner asked him if he belonged to the Union, and on Tonken's admission that he did, asked Tonken if he was there to cause trouble. Subsequently, Werner asked Tonken to describe what the Union was like.

There is no evidence that James Lamson, Respondent's vice president, interrogated employees about their union activities or the union activities of other employees, or that he threatened employees with layoffs or unspecified reprisals because they engaged in union activities. I find, however, that there is credible evidence, much of it from Lamson, himself, that he was aware of Elliot Tonken's union membership, as well as union membership by at least two other employees he hired for the Scarborough job, and he knew that the Charging Party Union was interested in organizing the 3E Company's employees. He admitted that he did not hire Ben Nest after Nest made the statement he would try to organize Respondent if he was hired for the Scarborough job, and the parties stipulated that the Charging Party Union filed an unfair labor practice charge concerning Respondent's failure to hire a number of applicants for jobs on the Scarborough job. (The parties stipulated that the charge was dismissed as not meritorious.) Lamson said that he suspected that there was union activity at the Scarborough jobsite. Lamson was not recalled to the witness stand to deny Werner's testimony that

²Lamson stated that he offered Tonken light duty on a job in Augusta, Maine, after he returned to work following a short absence after a back injury on the job. The Augusta job was in the early stage of construction, and shut down because of weather conditions after Tonken had worked there for only half a day. Lamson said that he authorized Tonken to return to work at the Sam's Warehouse Club job. Lamson said that in a conversation with Tonken about signing a workman's compensation release, Tonken said he wanted to talk to someone else because he did not understand what was going on, and he told Lamson that he was a union member. Lamson said he replied that he did not care, and agreed with Tonken that he had hired him because of what he knew Tonken could do. Lamson indicated that this incident was not a factor in selecting Tonken for termination in May.

³ Werner said that he had an inkling of an impending layoff, but that he did not know what else the Company had to offer employees.

he told Lamson that employees were asking about the Union, and Lamson told him not to get involved unless he wanted to.

Although there is no evidence that Lamson had direct knowledge of Werner's interrogation of employees, or that he knew that Werner threatened retaliation against employees for engaging in union activities, there is ample evidence from which it can be inferred that he opposed union organization of his employees, as demonstrated by his refusal to hire a job applicant who openly stated that if he was hired he would try to organize the Company's employees. From Lamson's failure to deny Werner's testimony that he was authorized by Lamson "to get into" the union talk on the job if he "wanted to," I find that not only did Lamson fail to instruct Werner to remain neutral concerning union activity, he implicitly authorized Werner to take whatever action he wanted to with regard to union talk on the job. Viewed in this context, I find that even if Werner's statements and actions were not explicitly authorized by Lamson, he gave Werner such broad discretion to act that Werner's statements and actions were within the scope of his employment.

IV

Threatening employees, whether explicitly or implicitly, with termination of employment if they engage in union activities is a well-established violation of Section 8(a)(1). Kona 60 Minute Photo, 277 NLRB 867 (1985); Baddour, Inc., 281 NLRB 546, 548 (1986).

The Board's test for determining whether interrogation of employees concerning their union activities or the union activities of other employees is violative of the Act is set out in Rossmore House, 269 NLRB 1176, 1177 (1984), enfd. sub nom. Hotel & Restaurant Employees Local 11 v. NLRB, 760 F.2d 1006 (9th Cir. 1985). In that case, the Board said that the basic test for evaluating whether interrogations violate the Act is "whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act." The Board went on to overrule the per se rule that it had established in PPG Industries, 251 NLRB 1146 (1990), stating that it ignored the reality of the workplace at least with respect to an employer's questioning of open and active union supporters about their union sentiments, in the absence of threat or promises. The totality of the circumstances test must be applied, even when the interrogation is directed to employees whose union sympathies are unknown. Sunnyvale Medical Clinic, 277 NLRB 1217 (1985). Some of the factors taken into consideration by the Board in determining whether under the totality of the circumstances the interrogation was coercive include whether the person interrogated was an open and active union supporter whether there is a prior history of employer hostility toward union supporters whether the questions were general and nonthreatening, and whether the management official had a casual and friendly relationship with the employee being questioned. Sunnyvale Medical Clinic, supra at 1218.

Applying the *Rossmore House* totality of the circumstances standard to the facts as I have found them in this case, I find that even when viewed in the reality of the workplace, Foreman Paul Werner's interrogation of Respondent's employees Charles Campbell and Elliot Tonken was threatening and 'reasonably tend[ed] to restrain, coerce, or interfere' with their rights guaranteed by Section 7 of the Act,

and, therefore, the interrogation violated Section 8(a)(1) of the Act. Also violative of Section 8(a)(1) were his thinly veiled threats that the Company would terminate the employment of employees who engaged in union activities.

Although it appears that Tonken openly acknowledged his union membership, the extent of Campbell's union sympathies or activities was unknown to Werner. It is clear from the record that Werner did not have a "casual and friendly" relationship with either Campbell or Tonken, such as might indicate to the two employees that his questioning of them about their union activities was casual and nonthreatening. To the contrary, his relationship with the employees on the Scarborough job was strictly that of supervisor to subordinates, and because of that sharply defined formal relationship, the employees could reasonably conclude that anything said by Werner to them represented the Employer's position.

In the context in which it occurred, Werner's interrogation of Campbell and Tonken and his actions could reasonably have been perceived by them as threatening and coercive, and intended to discourage their participation in union activity or face loss of employment.4 Werner did not limit his questioning of Campbell and Tonken to casual and friendly inquiries. Instead, his interrogation and actions showed union animus sufficient to coerce a reasonable employee. In Campbell's case, Werner not only questioned Campbell about his union activities and the union activities of Tonken, but also he went on to say that he did not like Tonken talking about the Union on the jobsite, and then said that Tonken would be one of the first laid off. The clear impact of that statement was a threat that the Company would terminate the employment of employees who engaged in union activities. Subsequently, Werner reinforced that threat by showing Campbell a list of names which included Tonken's name, and identified the list as a list of employees who would be laid off. Werner's statements and actions were a clear warning to Campbell that engaging in union activities would result in being laid off by the Company. In Tonken's case, Werner's inquiry about his union membership was immediately followed by a demand to know if Tonken was there to cause trouble. The reasonable implication of that question was that Werner equated union membership with trouble for the Employer, something which Tonken could reasonably interpret as a threat to his continued employment by 3E Company.

The unlawful interrogation of employees and threats by Paul Werner are attributable to Respondent 3E Company, even though there is no evidence that the Company's management specifically authorized him to interrogate employees or to threaten them with reprisals for engaging in union activities. 3E Company Vice President James Lamson was fully aware that there was union activity, though short of an organizing effort, at the Scarborough jobsite, and he gave his subordinate permission to get involved in union activities of the employees, if he wanted to, with the only limitation being that he was not to let what he had to do at the job be affected. By virtue of his supervisory position Werner was

⁴The General Counsel does not have to establish that either Campbell or Tonken, or any other employee, actually felt threatened by Werner's interrogation and threats, or that Respondent 3E Company intended to produce that effect. The test is an objective one. As stated in *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055 (1st Cir. 1981), cited by the Respondent. It is enough to show that "the employer's actions would tend to coerce a reasonable employee."

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clothed with the apparent authority to speak for the 3E Company. Lamson failed to place any restrictions, other than an ambiguous admonition not to let what he had to do at the job be affected, on Werner's authority to take any action he wanted concerning employee union activity at the jobsite. Under these circumstances the 3E Company is responsible for the violations of Section 8(a)(1) of the Act by its supervisor (foreman) on the Scarborough, Maine job.

CONCLUSION OF LAW

By coercively interrogating employees about their union activities and the union activities of other employees, and by threatening employees with layoff or unspecified reprisals because they engaged in union activities, Respondent 3E Company, Inc. has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist.

[Recommended Order omitted from publication.]